

RECEIVED  
CENTRAL FAX CENTER

JAN 20 2006

KCC 4777  
K-C 17,448

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of Paula Mary Sosalla et al. Art Unit 3761  
Serial No. 09/977,062  
Filed October 12, 2001  
Confirmation No. 1782  
For A DISPOSABLE ABSORBENT ARTICLE HAVING A COLOR GRADATION  
FEATURE  
Examiner Michele Kidwell

January 20, 2006

PETITION FOR REVIVAL OF AN APPLICATION  
FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)

Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

The above-identified application became abandoned for failure to file a timely and proper reply to a final Office action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the final Office action plus any extensions of time actually obtained.

## APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) An Request for Continued Examination along with a submission that meets the reply requirements;
- (3) Terminal disclaimer with disclaimer fee--required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

01/24/2006 CNGUYEN2 00000001 191345 09977062

01 FC:1453 1500.00 DA

KCC 4777  
K-C 17,448

## 1. Petition Fee

☐ Applicant claims small entity status.☐ Petition Fee of \$ \_\_\_\_\_ is enclosed.☒ The Commissioner is hereby authorized to charge the Petition fee of \$500.00 to Deposit Account No. 19-1345. The Commissioner is further authorized to charge any underpayment and credit any overpayment of government fees to Deposit Account No. 19-1345.

## 2. Reply and/or fee

A. The reply and/or fee to the above-noted Office action in the form of Request for Continued Examination under 37 C.F.R. §1.114 (identify type of reply):☐ has been filed previously on \_\_\_\_\_.☒ is enclosed herewith, along with a response to the final Office action dated December 23, 2003.

B. The issue fee of \$ \_\_\_\_\_

☐ has been paid previously on \_\_\_\_\_.☐ is enclosed herewith.

## 3. Terminal disclaimer with disclaimer fee

☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.☐ A terminal disclaimer and disclaimer fee of \$ \_\_\_\_\_ disclaiming the required period of time is enclosed herewith.

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional, the facts being set forth in detail below. The facts stated below are based on a reasonable investigation of the circumstances surrounding the abandonment of the Application conducted by the undersigned.

KDC 4777  
K-C 17,448

A. The instant Application was prepared, filed and prosecuted on behalf of Kimberly-Clark Worldwide, Inc. initially by Donald W. Tuegel (Reg. 45,424) and subsequently by Richard L. Bridge (Reg. No. 40,529). Mr. Tuegel is no longer with the firm of Senniger Powers.

B. An Office action was mailed to Senniger Powers on December 29, 2003 finally rejecting the claims. In response to the final Office action, applicants filed an Amendment B and Request for Withdrawal of the Finality on February 27, 2004. The filing included a full response to all issues raised by the Office in the final Office action, and a request that the Office withdraw the finality of the final Office action in view of the new grounds for rejections made in the final Office action. Enclosed as Exhibit A is a copy of the Amendment B and Request for Withdrawal of the Finality. Receipt by the Office of the Amendment is acknowledged in the Notice of Abandonment dated November 2, 2004, which is attached as Exhibit B.

C. An advisory action, attached as Exhibit C, was mailed by the Office on April 7, 2004, in which the Office declined to enter amendments made in the Amendment B and Request for Withdrawal of the Finality. No response to applicants' request for withdrawal of the finality of the final Office action was received.

D. The undersigned had a phone conference with Supervisory Examiner John Calvert on April 26, 2004 regarding applicants' request for withdrawal of the finality of the final Office action. Supervisory Examiner Calvert agreed to withdraw the finality of the final Office action and to treat the Amendment B and Request for Withdrawal of the Finality as a timely response to the Office action, with no additional response by applicants being necessary. A summary of the

KEC 4777  
K-C 17,448

interview was faxed to the Office by the undersigned on April 28, 2004. A copy of the summary is attached as Exhibit D along with the Office's auto-reply indicating receipt of the summary by the Office. Applicants relied on Examiner Calvert's agreement in not filing a further response to the final Office action, or an RCE, or a Notice of Appeal.

E. Despite Supervisory Examiner Calvert's agreement, the Notice of Abandonment dated November 2, 2004 was mailed out.

F. In additional conversations between the undersigned and Supervisory Examiner Calvert, Mr. Calvert stated that he was no longer supervising this case, but reiterated his prior agreement and passed on this information to the current supervisor at that time, Larry Schwartz.

G. The undersigned had a phone conversation with Supervisory Examiner Schwartz on December 9, 2004 to discuss the matter. Supervisory Examiner Schwartz agreed to follow Supervisory Examiner Calvert's agreement to withdraw the finality of the final Office action and to treat the Amendment B and Request for Withdrawal of the Finality as a timely response to the final Office action. Supervisory Examiner Schwartz did, however, request that applicants file a formal request that the holding of abandonment be withdrawn.

H. Pursuant to Supervisory Examiner Schwartz's request, applicants filed a Letter to Patent and Trademark Office on December 17 requesting withdrawal of the holding of abandonment. A copy of the Letter is attached as Exhibit E along with the facsimile confirmation that the Patent Office received the Letter. The documents referred to in the Exhibit E letter are not included herein with the Letter since these documents are already included herewith in prior Exhibits.

I. The undersigned placed a follow-up phone call to Supervisory Examiner Schwartz on February 3, 2005 to check on

KMC 4777  
K-C 17,448

the status of applicants request to withdraw the holding of abandonment. Supervisory Examiner Schwartz indicated at that time that he could not locate the file and requested that the undersigned fax a copy of the Letter to Patent and Trademark Office dated December 17, 2004. Attached as Exhibit F is a copy of the facsimile confirmation indicating that the Patent Office received the faxed copy of the Letter.

J. The undersigned again called Supervisory Examiner Schwartz in late February to check on the status of the request to withdraw the holding of abandonment. Supervisory Examiner Schwartz indicated that the file still had not been located and stated that he had instituted a search for the file and would contact the undersigned once the file was found.

K. The undersigned called Supervisory Examiner Schwartz again on April 28, 2005 to again check on the status of the lost file and the request to withdraw the holding of abandonment. Supervisory Examiner Schwartz stated that the file still had not been found and that he was going to send a request to Ms. Carolyn Brown, who handles file reconstructions at the Patent and Trademark Office. Supervisory Examiner Schwartz recommended that the undersigned follow up with Ms. Carolyn Brown the following week.

L. The following week, the undersigned called Ms. Brown and was told that she would investigate the matter and get back to the undersigned.

M. On May 18, 2005, having not heard from Ms. Brown, the undersigned spoke with Ms. Brown and she indicated that indeed the file had not been found. Ms. Brown agreed to mark the file as lost. The undersigned offered to send the necessary documents for reconstructing the file. However, Ms. Brown indicated a required period after which the file is marked lost

KCC 4777  
K-C 17,448

must pass before the file is reconstructed. The undersigned's notes of the phone call do not indicate what this time period was but as best recalled it was 2-3 months.

N. The undersigned called Ms. Brown in mid-August to check on the status of the lost file and to determine whether a reconstruction could be completed. Ms. Brown indicated that the file had been located.

O. The undersigned then called Supervisory Examiner Schwartz and he indicated that he was no longer the Supervisory Examiner for Art Unit 3761. He gave the undersigned the name of Tatyana Zalukaeva as the Supervisory Examiner in charge of this case.

P. On September 7, 2005, the undersigned spoke with Examiner Zalukaeva regarding the status of this case, including the agreements by both of the prior Supervisory Examiners' to withdraw the finality of the final Office action and treat the Amendment B as a timely filed response thereto. Examiner Zalukaeva agreed to check into the case and get back to the undersigned.

Q. On or about October 3, Examiner Zalukaeva left a voice mail for the undersigned indicating that she could not act on the request to withdraw the holding of abandonment and withdraw the finality of the final Office action and suggested that applicants file a Petition to revive the holding of abandonment.


R. While applicants firmly believe that the Letter dated December 17, 2004 and attached as Exhibit E is a proper petition under §1.181(a) to withdraw a holding of abandonment based on evidence that a response was timely filed (See MPEP

KCC 4777  
K-C 17,448

711.03(c)(I)(B)), the present Petition to Revive is being filed.

S. Mr. Bridge never intended to abandon the instant application.

Respectfully submitted,



Richard L. Bridge, Reg. No. 40,529  
SENNIGER POWERS  
One Metropolitan Square, 16th Fl.  
St. Louis, Missouri 63102  
314-231-5400

Enclosures:

- ☒ Fee Payment
- ☐ Reply
- ☐ Terminal Disclaimer/Fee
- ☐ Additional sheets containing statements establishing unintentional delay
- ☒ Other: Request for Continued Examination and Response to final Office action

RLB/tmg  
VIA FACSIMILE 571-273-8300

## TRANSACTION REPORT

FEB-27-2004 FRI 02:48 PM

FOR: SENNIGER POWERS

2314342

DATE START	RECEIVER	TX TIME	PAGES	TYPE	NOTE	M#	DP
FEB-27 02:45 PM	17033053590	2' 59"	15	SEND	OK	358	

TOTAL : 2M 59S PAGES: 15

## Law Offices of

SENNIGER, POWERS, LEAVITT AND ROEDEL

One Metropolitan Square, 16th Floor  
St. Louis, Missouri 63102

Telephone (314) 231-5400

Facsimile (314) 231-4342

## FACSIMILE TRANSMITTAL COVER SHEET

DATE: February 27, 2004 ATTORNEY DOCKET NUMBER: KCC 4777 (K: 17,448)

PTO FACSIMILE NUMBER: (703) 305-3590

PLEASE DELIVER THIS FACSIMILE TO: Michele M. KidwellTHIS FACSIMILE IS BEING SENT BY: Donald W. TuegelNUMBER OF PAGES: 15 INCLUDING COVER SHEETTIME SENT: 2:45OPERATOR'S NAME Cek

## CERTIFICATION OF FACSIMILE TRANSMISSION

I hereby certify that this paper is being facsimile transmitted to  
the Patent and Trademark Office on the date shown below.Carol A. Senniger Powers

EXHIBIT

A



RECEIVED  
CENTRAL FAX CENTER

JAN 20 2006

KCC 4777  
(K-C No. 17,348)  
PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of Paula Mary Sosalla et al.      Art Unit 3761  
Serial No. 09/977,062  
Filed October 12, 2001  
Confirmation No. 1782  
For A DISPOSABLE ABSORBENT ARTICLE HAVING A COLOR GRADATION  
FEATURE  
Examiner Michele Kidwell

February 27, 2004

AMENDMENT B AND REQUEST FOR WITHDRAWAL OF FINALITY

TO THE COMMISSIONER FOR PATENTS,  
SIR:

In response to the final Office action of December 29,  
2003, please enter the following amendments and request.

Amendments to the Claims are reflected in the listing of  
claims which begins on page 2 of this paper.

Remarks and Request For Withdrawal of Finality begin on page  
7 of this paper.

KCC 4777  
(K-C No. 17,448)  
PATENT

IN THE CLAIMS:

This listing of claims will replace all prior versions of claims in the application:

1. (currently amended) A disposable absorbent article having an area which is visible when the article is worn, a color gradation in said area providing a coloration which varies in intensity over the area from a higher intensity of color to a lower intensity of color, said gradation defining a gradual progression through successive stages of intensity of coloration, and a visible element in said area at a location where the coloration is of lower intensity or absent such that the element remains visible and is not obscured by the color gradation.

2. (original) A disposable absorbent article as set forth in claim 1 wherein said visible element is a graphic.

3. (original) A disposable absorbent article as set forth in claim 1 wherein said visible element is a registration mark.

4. (original) A disposable absorbent article as set forth in claim 1 wherein said visible element is a wetness indicator.

KCC 4777  
(K-C No. 17,448)  
PATENT

5. (original) A disposable absorbent article as set forth in claim 4 having an outer cover and an absorbent material disposed inside the cover, said color gradation and wetness indicator disposed on the cover.

6. (original) A disposable absorbent article as set forth in claim 5 wherein said wetness indicator comprises an active graphic.

7. (original) A disposable absorbent article as set forth in claim 5 wherein the article is a pant having a front region, a back region, and a crotch region, said wetness indicator being on a portion of the crotch region which is substantially free of color.

8. (original) A disposable absorbent article as set forth in claim 7 wherein said coloration changes from higher intensity to lower intensity generally in the direction of said crotch region.

9. (original) A disposable absorbent article as set forth in claim 7 wherein said coloration changes from higher intensity to lower intensity generally in the direction of one or more sides of the pant.

KCC 4777  
(K-C No. 17,148)  
PATENT

10. (original) A disposable absorbent article as set forth in claim 8 or 9 wherein said color gradation involves only one color.

11. (original) A disposable absorbent article as set forth in claim 8 or 9 wherein said color gradation involves a combination of different colors.

12. (original) A disposable absorbent article as set forth in claim 1 further comprising a graphic on said article, and a registration mark on said article for use in positioning said graphic on the article.

13. (previously presented) A disposable absorbent article as set forth in claim 12 wherein said article is a pant having a crotch region, and wherein said registration mark is located on said crotch region.

14. (previously presented) A disposable absorbent article as set forth in claim 1 comprising a training pant having outer cover with an interior surface and an opposite exterior surface, and an absorbent material disposed on the interior surface, said pant further having front, back and crotch regions, said visible element comprising an active graphic on said crotch region for indicating the wetness of said crotch region.

KCC 4777  
(K-C No. 17,448)  
PATENT

15. (currently amended) A disposable absorbent pant comprising an outer cover with an interior surface and an opposite exterior surface, an absorbent material disposed on the interior surface of the cover, said pant further having front and back regions which define a waist region, a crotch region extending between the front and back regions, a color gradation on an area of the pant which is visible when the pant is worn, said color gradation providing a coloration which varies from a higher intensity of color in the vicinity of the waist region to a lower intensity of color toward the crotch region, said gradation defining a gradual progression through successive stages of intensity of coloration, and a wetness indicator in said crotch region at a location where the coloration is of lower intensity or absent such that any indication of wetness by the wetness indicator remains visible and is not obscured by the color gradation.

16. (original) A disposable absorbent pant as set forth in claim 15 wherein said wetness indicator comprises an active graphic.

17. (previously presented) A disposable absorbent pant as set forth in claim 15 wherein said color gradation is printed in said area.

KCC 4777  
(K-C No. 17,448)  
PATENT

18. (previously presented) A disposable absorbent pant as set forth in claim 15 wherein said color gradation appears in said area regardless of whether the area is wet or dry.

19. (previously presented) A disposable absorbent article as set forth in claim 1 wherein said color gradation is printed on the article in said area.

20. (previously presented) A disposable absorbent article as set forth in claim 19 wherein said color gradation is printed with a permanent ink.

21. (previously presented) A disposable absorbent article as set forth in claim 1 wherein said color gradation appears in said area regardless of whether the area is wet or dry.

22. (previously presented) A disposable absorbent article as set forth in claim 1 wherein said color gradation appears in said area when the area is dry.

KCC 4777  
(K-C No. 17,448)  
PATENT

Remarks

Applicants herein amend claims 1 and 15. Upon entry of this amendment, claims 1-22 will remain pending.

Applicants are filing this paper without any interview with the Examiner to discuss the application, as was suggested by the Examiner in telephone conversation with the undersigned on February 2, 2004. Entry of this amendment is appropriate under 37 C.F.R. §1.116 because it places the application in form for allowance, or alternatively in better form for appeal. MPEP § 714.12.

I. Request For Withdrawal of Finality of Action

Pursuant to MPEP § 706.07(d), Applicants request withdrawal of the finality of the Office action. Applicants respectfully assert that the new grounds for rejection introduced in the Office action were not necessitated by Applicants' amendment.

A final rejection on a second office action is not proper if it includes a rejection based upon new grounds that are not necessitated by an amendment. In pertinent part MPEP §706.07(a) states:

Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the

KCC 4777  
(K-C No. 17,448)  
PATENT

claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c).....

In the present case, Examiner Angela Grayson issued a first Office action, dated April 3, 2003. That action included claim rejections under 35 USC § 112, and additional claim rejections under § 102 in view of U.S. Patent No. 6,075,178 (La Wilhelm). In response, Applicants filed Amendment A on June 25, 2003. The only amendments made to the claims were to address issues raised by the Examiner as to §112. No amendments were made to distinguish the cited art. The amendment was a clarifying amendment which did not change scope of the claims. New claims 17-22 were added in Amendment A, but each is in dependent form and could not necessitate new grounds for rejection.

With regard to independent claims 1 and 15, Applicants argued in Amendment A that the claims require a color gradation providing a coloration which varies in intensity of color from a higher intensity of color to a lower intensity of color. No claim limitations were added. The requirements for a gradation in color were in claims 1 and 15 as originally written. Thus, Applicants did not argue any limitation added by Amendment A.

The second (present) Office action of December 29, 2003 does not address the La Wilhelm reference nor Applicants'



KCC 4777  
(K-C No. 17,448)  
PATENT

arguments. Instead, U.S. Pat. No. 6,297,424 (Olson et al) is newly cited, and the Examiner takes a position that Olson anticipates claims 1-22. Applicants have not previously had opportunity to present arguments pointing out that Olson fails to show the requirements recited in the claims.

Accordingly, the new grounds for rejection in the Office action of December 29, 2003, based on newly cited art, were not necessitated by Applicants' amendment. In view of the foregoing, Applicants respectfully request that the Office action be re-classified as non-final.

**II. Response to Rejections under 35 USC § 102**

Applicants have invented a unique absorbent article for a child having an aesthetic appearance which facilitates an easier toilet training process. A key feature is a graduated coloration which permits both: 1) a moderately darker color on front and/or back sides which encourages the child to wear the article because it more closely resembles garments worn by older children and adults, and 2) a visible element such as an active graphic which changes its degree of visibility when exposed to liquid as a tool for motivating the child to use the toilet. The coloration also masks features not intended to be seen, such as underlying anatomical features or bodily exudates. The visible element remains on a lightly colored or white

KCC 4777  
(K-C No. 17,448)  
PATENT

background in order to maintain a visible appearance which will not be obscured by more intense coloration.

Independent claims 1 and 15 are herein amended to clarify distinctions relative to the prior art.

A. Claims 1-14 and 19-22

Claim 1 is directed to a disposable absorbent article having a gradation in color intensity. As amended, claim 1 recites a color gradation providing a coloration which varies in intensity from a higher intensity of color to a lower intensity of color, said gradation defining a gradual progression through successive stages of intensity of coloration, and a visible element at a location where the coloration is of lower intensity or absent such that the element remains visible and is not obscured by the color gradation.

Neither Olson nor any other reference of record shows every element of claim 1. Olson describes an absorbent article, such as a training pant, which is configured to provide an indication of wetness. The article includes a permanent character graphic (70), e.g., a dog, and several active object graphics (78), e.g., fish. Upon contact with urine, the active graphics either appear, disappear, or change to a brighter or darker color, thereby indicating wetness. The outer cover of the article has a white appearance (Column 9, lines 35-42). The

KCC 4777  
(K-C No. 17,448)  
PATENT

cover includes a simulated elastic waistband (80), a simulated fly opening (82), and simulated elastic leg bands (84).

Olson fails to show or suggest a "color gradation," as its outer cover is mono-color in appearance. Applicants respectfully disagree with the statement in the Office action that one of Olson's fish (78) provides a coloration which varies in intensity from a higher intensity of color to a lower intensity of color. Olson has no suggestion that a portion of one fish could have a different appearance than another portion of that same fish to thereby present a gradation in color internal to one fish. Moreover, if a first fish is wet and a second, adjacent fish is dry, there is no gradation. Although the two fish will have two different colors or appearances, that is not a variation defining a gradual progression through successive stages of intensity of coloration, as recited in claim 1. Further, the fish are spaced from one another and colors are separated by sharp edges defined by lines of print at outer perimeters of each fish. Such a spaced and defined pattern is not a gradual progression.

It also bears emphasis that neither Olson nor any other cited reference recognizes the problem solved by applicants' disclosure, specifically, providing a color gradation which varies in intensity so that selected areas of an article have a higher color intensity to create certain visual effects and other areas of the article have a lower color intensity (or no color)

KCC 4777  
(K-C No. 17,448)  
PATENT

to allow an element such as an active graphic to be seen and not obscured by the color of higher-intensity.

Since the invention disclosed in Olson neither discloses nor suggests the article recited in claim 1, the Section 102 rejection is improper. Accordingly, applicants request that the rejection be withdrawn.

Claims 2-14 and 19-22, which depend directly or indirectly from claim 1, are patentable for the same reasons as claim 1. Accordingly, applicants respectfully request that the rejections be withdrawn. Moreover, some of these claims recite additional features which distinguish the prior art. Claim 8 requires that coloration changes from higher intensity to lower intensity generally in the direction of the crotch region, and claim 9 recites that coloration changes from higher intensity to lower intensity generally in the direction of one or more sides of the pant. Applicants respectfully assert that the statement in the Office action that Olson discloses such directional changes in coloration is incorrect. Besides not showing any gradation in color, Olson has no suggestion of a directional orientation to any coloration scheme. Claim 19 requires that the color gradation is printed in the visible area of the article, and claim 20 further requires that it be printed with a permanent ink. In contrast, Olson's active graphic fish (78), which the Examiner has equated with a gradation, is formed from an ink which fades or disappears when exposed to liquid. Claim 21

KCC 4777  
(K-C No. 17,448)  
PATENT

specifies that the color gradation appears regardless of whether the area is wet or dry, whereas Olson's fish appears or disappears between wet and dry states. Thus, for these additional reasons, the rejections of these claims should be withdrawn.

B. Claims 15-18

Claim 15 is directed to a disposable absorbent pant. As amended, claim 15 recites, among other elements, a color gradation providing a coloration which varies from a higher intensity of color in the vicinity of a waist region to a lower intensity of color toward a crotch region, said gradation defining a gradual progression through successive stages of intensity of coloration.

Neither Olson nor any other reference of record shows every element of claim 15. As discussed above, Olson fails to show a color gradation. Moreover, Olson fails to show a higher intensity of color in the vicinity of a waist region and lower intensity of color toward a crotch region. Since the invention disclosed in Olson neither discloses nor suggests the disposable absorbent pant recited in claim 15, the Section 102 rejection is improper. Accordingly, applicants request that the rejection be withdrawn.

Claims 16-18, which each depend from claim 15, are patentable for the same reasons as claim 15. Accordingly,

KCC 4777  
(K-C No. 17,448)  
PATENT

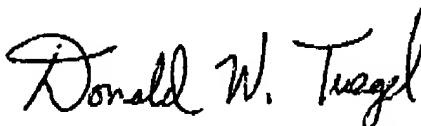
applicants respectfully request that the rejections of claims 16-18 be withdrawn. With respect to claim 18, it requires that the color gradation appears regardless of whether the area is wet or dry, whereas Olson's fish appears or disappears between wet and dry states. Thus, for this additional reason, the rejection of claim 18 should be withdrawn.

III. Conclusion

As it is believed that the application is in condition for allowance, a notice of allowance is respectfully requested.

Applicants believe no fees are associated with this Amendment. However, if the Commissioner determines that a fee is due, he is authorized to charge Deposit Account No. 19-1345.

Respectfully submitted,



Donald W. Tuegel, Reg. No. 45,424  
SENNIGER, POWERS, LEAVITT & ROEDEL  
One Metropolitan Square, 16th Floor  
St. Louis, Missouri 63102  
(314) 231-5400

DWT/caa

Via Facsimile 703-305-3590



## UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/977,062	10/12/2001	Paula Mary Sosalla	KCC 4777	1782

321 7590 11/02/2004

SENNIGER POWERS LEAVITT AND ROEDEL  
ONE METROPOLITAN SQUARE  
16TH FLOOR  
ST LOUIS, MO 63102

EXAMINER

KIDWELL, MICHELE M

ART UNIT

P/PER NUMBER

3761

DATE MAILED: 11/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

EXHIBIT

B

**Notice of Abandonment**

Application No.

09/977,062

Examiner

Michele Kidwell

Applicant(s)

SOSALLA ET AL.

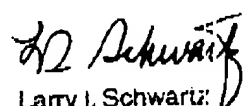
Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 12/29/03
  - (a) ☐ A reply was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply (including a total extension of time of \_\_\_\_\_ month(s)) which expired on \_\_\_\_\_.
  - (b) ☒ A proposed reply was received on 27 February 2004, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.  
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
  - (c) ☐ A reply was received on \_\_\_\_\_ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
  - (d) ☐ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85)
  - (a) ☐ The issue fee and publication fee, if applicable, was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
  - (b) ☐ The submitted fee of \$\_\_\_\_\_ is insufficient. A balance of \$\_\_\_\_\_ is due.  
The issue fee required by 37 CFR 1.18 is \$\_\_\_\_\_. The publication fee, if required by 37 CFR 1.18(d), is \$\_\_\_\_\_.
  - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
  - (a) ☐ Proposed corrected drawings were received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply.
  - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on \_\_\_\_\_ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☐ The reason(s) below.

  
 Larry I. Schwartz  
 Supervisory Patent Examiner  
 Group 3700

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

U.S. Patent and Trademark Office  
 PTOL-1432 (Rev. 04-01)

Notice of Abandonment

Part of Paper No. 102704





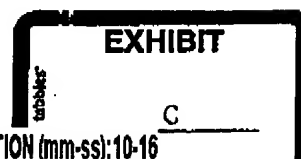
## UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
✓ 09/977,062	✓ 10/12/2001	✓ Paula Mary Sosalla	✓ KCC 4777	✓ 1782
321 7590 04/07/2004 <i>DWT/MEG/CMG</i> SENNIGER POWERS LEAVITT AND ROEDEL ONE METROPOLITAN SQUARE 16TH FLOOR ST LOUIS, MO 63102			EXAMINER KIDWELL, MICHELS M	
			ART UNIT ✓ 3761	PAPER NUMBER

DATE MAILED: 04/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.



BEST AVAILABLE COPY

**Advisory Action**

Application No.

09/977,062

Applicant(s)

SOSALLA ET AL.

Examiner

Michele Kidwell

Art Unit

3761

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 27 February 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.  
 2. ☒ The proposed amendment(s) will not be entered because:  
 (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);  
 (b) ☐ they raise the issue of new matter (see Note below);  
 (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
 4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
 5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.  
 6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.  
 7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: 1-22.

Claim(s) withdrawn from consideration: \_\_\_\_\_

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.  
 9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_  
 10. ☐ Other: \_\_\_\_\_

JOHN J. CALVERT  
 SUPERVISORY PATENT EXAMINER  
 TECHNOLOGY CENTER 3700

Sheet (PTOL-303)

Application No.

09/977,062

Continuation of 2. NOTE: the addition of the limitation requiring the gradation to define a gradual progression through successive stages of intensity of coloration will require further searching and consideration.

TO: Auto-reply fax to 3142314342 COMPANY:

## Auto-Reply Facsimile Transmission



TO:

Fax Sender at 3142314342

Fax Information

Date Received:

4/28/2004 5:35:03 PM [Eastern Daylight Time]

Total Pages:

3 (including cover page)

**ADVISORY:** This is an automatically generated return receipt confirmation of the facsimile transmission received by the Office. Please check to make sure that the number of pages listed as received in Total Pages above matches what was intended to be sent. Applicants are advised to retain this receipt in the unlikely event that proof of this facsimile transmission is necessary. Applicants are also advised to use the certificate of facsimile transmission procedures set forth in 37 CFR 1.8(a) and (b), 37 CFR 1.6(f). Trademark Applicants, also see the Trademark Manual of Examining Procedure (TMEP) section 306 et seq.

Received  
Cover  
Page

APR-28-2004 WED 04:31 PM SENNIGER POWERS	FAX NO. 3142314342	P. 01
--	--------------------	-------

Law Offices of  
SENNIGER, POWERS, LEAVITT AND ROEDER  
One Metropolitan Square, 15th Floor  
St. Louis, Missouri 63103  
Telephone (314) 331-5400  
Facsimile (314) 331-4342

FACSIMILE TRANSMISSION COVER SHEET

DATE: 4/28/04 ATTORNEY DOCKET NUMBER: EPC 477 (K-C 17, 4281)  
PTO FACSIMILE NUMBER: (703) 572-9306

PLEASE DELIVER THIS FACSIMILE TO: John Calver  
THIS FACSIMILE IS BEING SENT BY: Richard L. Bridger  
NUMBER OF PAGES: 3 INCLUDING COVER SHEET

TIME SENT: 4:30 PM OPERATOR'S NAME: Michelle Grindstaff

CERTIFICATION OF FACSIMILE TRANSMISSION

I hereby certify that this paper is being facsimile transmitted to the Patent and Trademark Office on the date shown below.

Michelle Grindstaff  
Typed or printed name of person signing certification

*M. Grindstaff* 4/28/04  
Signature Date

Type of paper transmitted: Letter to the Patent and Trademark Office and Interview Summary

Applicant's Name: Paula Mary Scallie et al  
Serial No. (Control No.): 09/977,062 Examiner: KIDWELL  
Filing Date: October 12, 2001 Art Unit: 2761

Application Title: A DISPOSABLE ABSORBENT ARTICLE HAVING A COLOR GRADATION FEATURE

IF YOU DO NOT RECEIVE ALL PAGES CLEARLY, CALL BACK AS SOON AS POSSIBLE. CONFIRMING NUMBER IS (314) 331-5400.

PAGE 29 \* RCVD AT 4/28/2004 5:35:03 PM [Eastern Daylight Time] \* SVR:USPTO-EFXXRF-6/24 \* DNIS:2738300 \* CSID:3142314342 \* DURATION (mm-ss):10-16

EXHIBIT

D

BEST AVAILABLE COPY

RECEIVED  
CENTRAL FAX CENTER

KC' 4777 (K-C 17,448)  
PATENT

JAN 20 2006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of Paula Mary Sosalla et al.      Art Unit 3761  
Serial No. 09/977,062  
Filed October 12, 2001  
Confirmation No. 1782  
For A DISPOSABLE ABSORBENT ARTICLE HAVING A COLOR GRADATION  
FEATURE  
Examiner Michele Kidwell

April 28, 2004

LETTER TO PATENT AND TRADEMARK OFFICE  
AND INTERVIEW SUMMARY

TO THE COMMISSIONER FOR PATENTS,

SIR/MADAM:

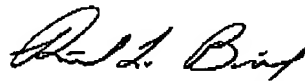
The undersigned thanks Supervisory Examiner John Calvert for his phone conference of April 26, 2004. The advisory action dated April 7, 2004 and the finality of the Office action dated December 29, 2003 were discussed.

Examiner Calvert agreed to withdraw the advisory action and the finality of the final Office action. It is the undersigned's understanding that applicants' Amendment B filed February 27, 2004 will be treated as a timely response to the Office action and that no additional response by the applicants is due at this time.

KC 4777 (K-C 17,448)  
PATENT

The undersigned respectfully requests a phone call if any  
of the above information is incorrect.

Respectfully submitted,



Richard L. Bridge, Reg. No. 40,529  
SENNIGER, POWERS, LEAVITT & ROEDEL  
One Metropolitan Square, 16th Floor  
St. Louis, Missouri 63102  
(314) 231-5400

RLB/tmg

VIA FACSIMILE (703) 872-9302

## Auto-Reply Facsimile Transmission



TO: Fax Sender at 3142314342  
Fax Information  
Date Received: 12/17/2004 5:43:00 PM [Eastern Standard Time]  
Total Pages: 24 (including cover page)

**ADVISORY:** This is an automatically generated return receipt confirmation of the facsimile transmission received by the Office. Please check to make sure that the number of pages listed as received in Total Pages above matches what was intended to be sent. Applicants are advised to retain this receipt in the unlikely event that proof of this facsimile transmission is necessary. Applicants are also advised to use the certificate of facsimile transmission procedures set forth in 37 CFR 1.8(a) and (b), 37 CFR 1.6(f). Trademark Applicants, also see the Trademark Manual of Examining Procedure (TMEP) section 306 et seq.

Received  
Cover  
Page

=====>

DEC-17-2004 FRI 04:42 PM SENNIGER POWERS	FAX NO. 3142314342	P. 01
--	--------------------	-------

Law Offices of  
SENNIGER, POWERS, LEAVITT AND ROSEBORN  
One Metropolitan Square, 16th Floor  
St. Louis, Missouri 63102  
Telephone (314) 331-5400  
Facsimile (314) 331-4342

FACSIMILE TRANSMISSION COVER SHEET

DATE: 12/17/04 ATTORNEY DOCKET NUMBER: KCC 4772 (K-C 37,448)  
PRO FACSIMILE NUMBER: (703) 872-9306

PLEASE DELIVER THIS FACSIMILE TO LARRY SCHWARTZ  
THIS FACSIMILE IS BEING SENT BY: Richard L. Bickel  
NUMBER OF PAGES: 24 INCLUDING COVER SHEET  
TIME SENT: 4:42 PM OPERATOR'S NAME: Michelle Grindstaff

CERTIFICATION OF FACSIMILE TRANSMISSION

I hereby certify that this paper is being facsimile transmitted to  
the Patent and Trademark Office on the date shown below.

Michelle Grindstaff  
Typed or printed name of person signing certification  
Signature: [Signature] Date: 12/17/04

Type of paper transmitted: Letter to the Patent and Trademark  
Office (copies of Notice of Abandonment, Amendment R & Request for  
Withdrawal of Finality, Interview Summary)

Applicant's Name: Paula Mary Roselle et al.  
Serial No. (Control No.): 62/972,062 Examiner: Kibbell  
Filing Date: October 12, 2001 Art Unit: 3761  
Application Title: A DISPOSABLE ABBREVIATED ARTICLE HAVING A COLOR  
GRADATION FEATURE

IF YOU DO NOT RECEIVE ALL PAGES CLEARLY, CALL BACK AS SOON AS  
POSSIBLE. CONTINUING NUMBER IS (314) 331-5400.

PAGE 104 \* RCVD AT 12/17/2004 5:43:00 PM [Eastern Standard Time] \* SVR:USPTO-EFXXF-6/24 \* DNIS:2738300 \* CSID:3142314342 \* DURATION (mm:ss):10:16

EXHIBIT

E

RECEIVED  
CENTRAL FAX CENTER KCC 777 (K-C 17,448)  
PATENT

JAN 20 2006

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of Paula Mary Sosalla et al. Art Unit 3761  
Serial No. 09/977,062  
Filed October 12, 2001  
Confirmation No. 1782  
For A DISPOSABLE ABSORBENT ARTICLE HAVING A COLOR GRADATION  
FEATURE  
Examiner Michele Kidwell

December 17, 2004

LETTER TO PATENT AND TRADEMARK OFFICE

TO THE COMMISSIONER FOR PATENTS,

SIR/MADAM:

Applicants hereby respectfully request withdrawal of the holding of abandonment set forth in the Notice of Abandonment dated November 2, 2004. A copy of the Notice of Abandonment is enclosed herewith.

1. The Notice of Abandonment states that applicants failed to timely file a response to the final Office action dated December 29, 2003.

2. In response to the final Office action, applicants filed an Amendment B and Request for Withdrawal of the Finality on February 27, 2004. The filing included a full response to all issues raised by the Office in the final Office action, and a request that the Office withdraw the finality of the final Office action in view of the new grounds for rejections made in the final Office action. Enclosed is a copy of the Amendment B and Request for Withdrawal of the Finality. Receipt by the



KCC 777 (K-C 17,448)  
PATENT

Office of the Amendment is acknowledged in the Notice of Abandonment dated November 2, 2004.

3. An advisory action was mailed by the Office on April 7, 2004, in which the Office declined to enter amendments made in the Amendment B and Request for Withdrawal of the Finality. No response to applicants' request for withdrawal of the finality of the final Office action was received.

4. The undersigned had a phone conference with Supervisory Examiner John Calvert on April 26, 2004 regarding applicants' request for withdrawal of the finality of the final Office action. Supervisory Examiner Calvert agreed to withdraw the finality of the final Office action and to treat the Amendment B and Request for Withdrawal of the Finality as a timely response to the Office action, with no additional response by applicants being necessary. A summary of the interview was faxed to the Office by the undersigned on April 28, 2004. A copy of the summary is attached, along with the Office's auto-reply indicating receipt of the summary by the Office.

5. Despite Supervisory Examiner's Calvert's agreement, the Notice of Abandonment dated November 2, 2004 was mailed out.

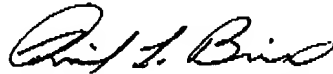
6. In additional conversations between the undersigned and Supervisory Examiner Calvert, Mr. Calvert stated that he was no longer supervising this case, but reiterated his prior agreement and passed on this information to the current supervisor, Larry Schwartz. This letter is being filed pursuant to a request made by Mr. Schwartz in a December 9, 2004 phone conversation with the undersigned.

KCC 777 (K-C 17,448)  
PATENT

In view of the above and the attachments included with this letter, applicants request that the holding of abandonment be withdrawn, that the finality of the final Office action dated December 29, 2003 be withdrawn, and that applicants' Amendment B and Request for Withdrawal of Finality dated February 27, 2004 be treated as a timely response to the Office action and given full consideration.

Applicants believe that no fee is necessary in connection with this letter. However, in the event that a fee is deemed necessary, applicants hereby authorize the Office to charge such fee to Deposit Account No. 19-1345.

Respectfully submitted,



Richard L. Bridge, Reg. No. 40,529  
SENNIGER POWERS  
One Metropolitan Square, 16th Floor  
St. Louis, Missouri 63102  
(314) 231-5400

RLB/tmg

VIA FACSIMILE 703-872-9306

## Auto-Reply Facsimile Transmission



TO: Fax Sender at 3142314342

Fax Information  
Date Received:  
Total Pages:

2/3/2005 1:22:16 PM [Eastern Standard Time]  
24 (including cover page)

**ADVISORY:** This is an automatically generated return receipt confirmation of the facsimile transmission received by the Office. Please check to make sure that the number of pages listed as received in Total Pages above matches what was intended to be sent. Applicants are advised to retain this receipt in the unlikely event that proof of this facsimile transmission is necessary. Applicants are also advised to use the certificate of facsimile transmission procedures set forth in 37 CFR 1.8(a) and (b), 37 CFR 1.6(f). Trademark Applicants, also see the Trademark Manual of Examining Procedure (TMEP) section 306 et seq.

Received  
Cover  
Page  
=====>

FEB-03-2006 THU 12:22 PM SENNIGER POWERS	FAX NO. 3142314342	P. 01
<b>SENNIGER POWERS</b> ONE METROPOLITAN SQUARE 16TH FLOOR ST. LOUIS, MISSOURI 63102 TELEPHONE 314-231-6400 FACSIMILE 314-231-4342		
<b>FACSIMILE TRANSMITTAL COVER SHEET</b>		
DATE: <u>2/3/05</u> SPLR FILE NO. <u>14-4771</u> SENT BY <u>RLB</u>		
FACSIMILE NUMBER BEING CALLED <u>571-278-4390</u>		
PLEASE DELIVER THE FOLLOWING PAGES TO:		
NAME <u>L. Schwartz</u>		
THIS FACSIMILE IS BEING SENT BY:		
NAME <u>Richard L. Bridge</u>		
MESSAGE:		
NUMBER OF PAGES: <u>24</u> (INCLUDING COVER SHEET)		
TIME SENT: <u>12:21 PM</u> OPERATOR'S NAME: <u>Michelle</u>		
<small>This facsimile contains CONFIDENTIAL INFORMATION WHICH ALSO MAY BE LEGALLY PRIVILEGED and which is intended only for the use of the Addressee(s) named above. If you are not the intended recipient of this facsimile, or the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that any use, dissemination, distribution or copying of this facsimile is strictly prohibited. If you have received this facsimile in error, please immediately notify us by telephone and return the original facsimile to us at the above address via the U.S. Postal Service. Thank you.</small>		
IF YOU DO NOT RECEIVE ALL PAGES CLEARLY, CALL BACK AS SOON AS POSSIBLE. CONFIRMING NUMBER: 314-231-6400		
PAGE 001 * RCVD AT 20060512 12:16 PM [Eastern Standard Time] * SVR:USPTO-EFAXF-6/24 * DNIS:2738300 * CSID:3142314342 * DURATION (mm-ss):10-16		

EXHIBIT

F

BEST AVAILABLE COPY